Acquisition Ethics Training

2006
Office of the Staff Judge Advocate
Fort Jackson SC
803 751-6525/7323

Ethics and Empowerment

- **Traditionally, obligating Government funds for purchases was reserved to trained procurement professionals. We still have acquisition professionals, who are schooled in law and regulation regarding the responsibilities inherent in spending taxpayer money. But, with the explosion of the GPC, many non-procurement people (including most of you) now have been delegated authority to obligate Government funds and streamline the acquisition process for most small purchase needs.**

- **This is what is meant by “empowerment.” You have the card, program responsibility, or supervisory control over someone who has a GPC. This places the burden of “doing the right thing” squarely on YOUR shoulders.**

The Ethics Remain the Same

- Regardless of whether you are an acquisition professional or a brand-new GPC user, all of the same ethics rules apply to you.

- These are the same rules that apply to all Federal employees that you see in other ethics training.

14 Principles of Government Service

- Yes, your old friend, the 14 Principles
- Use them when focusing on the kind of issues you will have when spending, overseeing, or supervising the spending of the government's $ $, whatever your particular capacity.

“Acquisition Ethics” Issues

- Conflicts of Interest/Non-Government Employment
- Gifts and Bribes
- Financial Disclosure
- Disclosure of Source Selection Information/CPBI

“Acquisition Ethics” Issues

- Allowing for “Time-Off”
- Misuse of Contractor Personnel
- Traveling with Contractors
- Recommendation and Awards for Contractor Personnel
- Organizational Conflicts of Interest
- Working for Contractors after ending Government Service

REMEMBER

- Our rules haven’t changed, we are just adjusting our perspective to consider ethics principles in terms of how we spend government dollars.

RESOURCES

- Fort Jackson SJA Website – Info on "Acquisition Ethics" topics listed: http://www.jackson.army.mil/sja/admin.htm

- Army Office of General Counsel, Ethics & Fiscal website: http://www.hqda.army.mil/ogc/eandf.htm

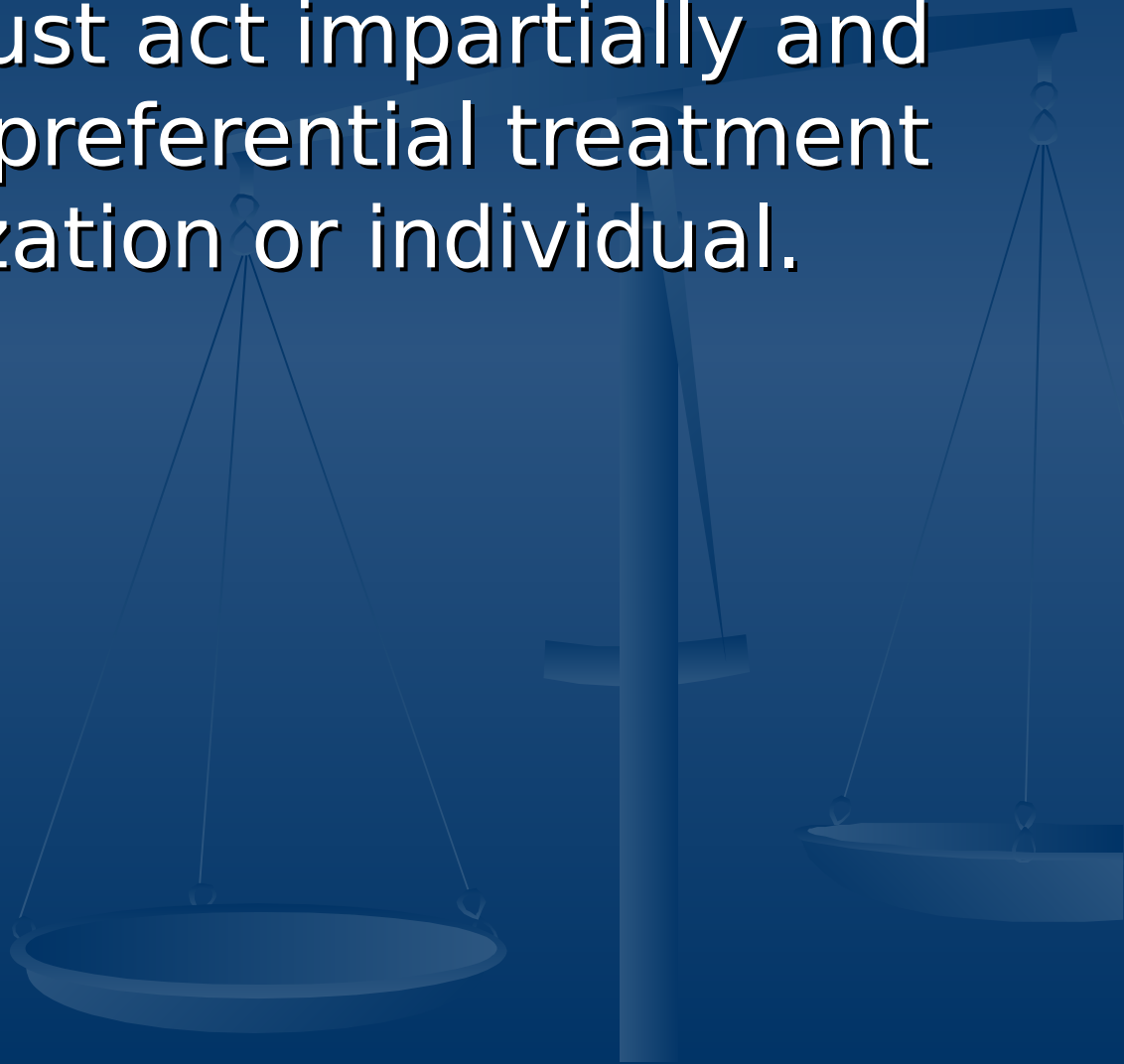
CONFLICTS OF INTEREST

- Government Employees CANNOT use Public Position (purchaser, contracting officer, approving official, etc.) for private gain. (Principle #7)

- Think about what may be (or reasonably may be perceived to be) “private gain” – it is not necessarily money in your pocket. AND

Conflicts of Interest - Impartiality

- Employees must act impartially and may not give preferential treatment to any organization or individual. (Principle #8)



Conflicts of Interest - Conflicting Financial Interests

- **18 U.S.C. 208; 5 CFR 2635, subpart D**

- **You may not participate in any substantial fashion in any official matter in which YOU have a financial interest. Who else does this include?**
- **Your spouse**
- **Your minor children**
- **Your general partner**
- **Any organization which you serve as officer, director, trustee, gen partner, or employee -or-**
- **Any person/entity with which you have an agreement or arrangement for non-Federal employment**

Conflicts of Interest - Reality Check

- WARNING:
  If you are a supervisor who, due to a conflict of interest, cannot make a purchase yourself because it might expose you to say, criminal prosecution or other dire consequences, **DO NOT** try and get around the hurdle by ordering a subordinate cardholder to acquire the item from the conflicting vendor. (**Nice Try**)

Conflicts of Interest - **Loss of Impartiality**

- **5 CFR 2635, subpart E**
- **You also may not participate in any official matter involving specific parties (such as a purchase from a vendor):**
- **that affects the financial interests of a member of your household -or-**
- **in which a person with whom you have a "covered relationship" is a party or represents a party**

Conflicts of Interest - "Loss of Impartiality (5 CFR 2635, subpart E)

- **You have a "covered relationship" with:**
- **Anyone with whom you have a business relationship**
- **A member of your household or close personal relative**
- **Anyone whom your spouse, parent, or child serves as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee**
- **Anyone whom you served as officer, director, trustee, etc., within the last year (last 2 years if you received an extraordinary severance) -or-**
- **Any organization in which you are an active participant (e.g., committee member)**

Conflicts of Interest - You Make the Call

- **Chief Sharp, a cardholder at the JAG office, is authorized to procure some recording equipment. His wife, Betty, runs "WordTech Inc.," a business that wholesales this equipment and offers to sell it to her husband at just above cost. This will save Fort Jackson 20% over the other leading vendor for this equipment. Can Chief Sharp procure the items from WordTech, Inc.?**
- **A. Yes, because the purchase will save the Government money**
- **B. No, because the purchase would be made from his wife's company**

And the Answer Is. . .

- **No, because the purchase would be made from his wife's company. Even if Chief Sharp is authorized to make purchases of certain supplies, the supplies are delivered and there is substantial cost savings to the Government, his purchases would directly affect the financial interest of his wife's business. Taxpayers may appreciate the gesture, but this transaction falls under the category of Conflicting Financial Interest.**

Conflicts of Interest - You Make the Call

- COL Bigg, a senior commander at Fort Jackson, is on the Board of Directors of Cutting Edge Technologies. Cutting Edge is marketing a new product of a type used in COL X's command. He directs his cardholder and Executive Assistant to purchase items for use and testing. She knows he is on the Cutting Edge Board. Should she make the purchase?

Foul Ball!

- **COL Bigg has a financial interest in Cutting Edge. His order to his EA could constitute a violation of 18 U.S.C. 208. She should not purchase items from this source. Even if the products from a particular company are potentially unique in nature and even though the EA has no affiliation with Cutting Edge, it is still a Conflicting Financial Interest for COL Bigg to instruct the EA to direct business to this company because he is a board member.**

Conflicts of Interest - How About This One?

- SSG Fine makes a number of purchases for his unit from Columbia Products. His wife recently started working there part-time as a salaried employee. Can he continue to purchase items from them as he as always done?

No.

- SSG Fine now has a “covered relationship” with Columbia Products. He should discontinue making any decisions/transactions with Columbia Products and inform his supervisor/approving official. An Agency Designee may assist him in determining whether such a relationship would or would not cause an appearance of a conflict of interest.

- Any questions about Conflicts of Interest?

Gifts and Bribes

- Employees involved in the acquisition process will always have ethics issues arise regarding gratuities (gifts), and possibly even bribes.

- The enormous amount of money the government spends guarantees that lots of businesses will be vigorously competing to get some of those government $$. One way to try to get that business is by giving something to those who decide how (or where) money is spent.

Gifts and Bribes - What is a Gift?

- A gift is any thing of value that is not *specifically excluded* by regulatory definition. "Gifts" do not have to be money or merchandise, or even anything tangible, so long as value is conveyed to the recipient.

Gifts and Bribes - What is a Bribe?

Accepting a gift, even if nominal in value, in return for being influenced in the performance of an official act is a bribe.

18 USC Section 201

NOTE: Accepting (or offering) a bribe is a criminal offense.

Gifts and Bribes - Gifts

- Note that “business gifts” are part of everyday commerce. Vendors, etc., who are offering things of value to government employees may have no knowledge that doing so is an ethical issue for the employee. It is each employee’s individual responsibility to ensure that he does not accept an improper gift.

Gifts and Bribes - Gifts

- Prohibited from accepting a gift:
  - Because of your position (remember bribe!)
  - From a prohibited source – Vendors, contractors, and their employees are prohibited sources.

- No solicitation for retirement or other gift for Government employee from vendors, contractors, or their employees

Gifts and Bribes - Gifts

Is it a gift? If not a gift, no prohibition

Non-gifts:

- Modest items of food and refreshments (like coffee and donuts) when not served as a meal
- Prizes in contests open to the public
- Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, intended only for presentation
- Commercial discounts available to the public or to all Government civilian or military personnel
- Anything you pay market/face value for

Gifts and Bribes - Exceptions

- If you determine that what you are being offered is a gift (because it is not specifically excluded), the next step is to determine whether you may accept because one of the several exceptions covers your situation.

- There are twelve regulatory exceptions.

Gifts and Bribes - Exceptions

- Gifts with a market value of less than $20
- Gifts based on a personal relationship
- Discounts to groups
- Certain awards & honorary degrees
- Gifts based on outside business or employment relationships
- Gifts of attendance at qualifying widely attended gatherings
- Certain gifts in connection with political activities

Gifts and Bribes - Exceptions

- Social invitations from other than prohibited sources
- Meals, refreshments, & entertainment in foreign areas
- Gifts to the President or Vice President
- Gifts authorized by supplemental agency regulation
- Gifts authorized under specific statutory authority

Gifts and Bribes - Exceptions

Gifts of $20 or Less. Unsolicited gifts with a market value of $20 or less per source, per occasion, so long as the total value of all gifts received from a single source during a calendar year does not exceed $50. Exception does not apply to gifts of cash/cash equivalents, or investment interests. Employees may decline gifts to keep aggregate value at $20 or less, but may not pay differential over $20 to retain gifts.

Gifts and Bribes - Gifts - Exceptions

- The “$20 rule” is probably the most-used exception for those involved in the acquisition process. It is straightforward, and allows acceptance for most of those promotional items routinely available in the commercial setting – calendars, pens, book bags, mugs, key chains, etc.

Gifts and Bribes - You Make the Call

- ***A vendor offers to drive an Army employee to lunch at a restaurant near the mall where the cardholder has made a government purchase.***
- ***At the restaurant, the employee tries to pick up the employee's $6 t***

May the employee accept the ride? How about the lunch?

Let's See...

- First, the vendor (or the vendor's employee) is a prohibited source, so the general rule is no gifts.
- Both the ride and the lunch probably total out to less than $20, thereby qualifying for the exception.
- The employee may accept, but he should not do so if it would cause an appearance problem.

Gifts and Bribes – You Make the Call

- Our cardholder, SSG Fine, does quite a bit of business with a particular vendor. One day, the manager sees him in the store, and says “We sure appreciate you shopping here. If you can get that special order in today, I can give you two tickets to Saturday’s Columbia Blowfish game.”
- Can SSG Fine take the tickets?

Absolutely Not!

- The manager's offer is a ***bribe***, even though it is of a minimal value (Say, $15). SSG Fine is looking for big trouble if he accepts.

- Note that SSG Fine could have accepted if the manager had offered the tickets unconditionally – as a "thank you."

Gifts and Bribes - Exceptions

Gifts Based on a Personal Relationship. Gifts based on a personal relationship, such as a family relationship or personal friendship rather than the position of the employee, may be accepted. Relevant factors to consider in making the determination include the history of the relationship and whether family member or friend personally pays for the gift.

Gifts and Bribes - You Make the Call

- Our Cardholder, SSG Fine, also has an Uncle who works for a major source that SSG Fine purchases from. They see each other occasionally at family gatherings. Uncle drops by SSG Fine's quarters at Christmas and gives the family a new, big LED TV.
- Can the Fine family accept the gift?

Probably Not

- The TV *could* be based on a personal relationship, but the facts must be analyzed. Questions to ask:
- Has there been a history of expensive gifts from the Uncle, particularly before SSG Fine was a purchaser?
- Who paid for the TV? If it was the employer, it is definitely not acceptable.

Gifts and Bribes Exceptions – Discounts & Similar Benefits

- ***SOME*** discounts are not considered gifts at all (to all government employee, all military personnel)
- **More Restrictive** discounts must be evaluated to ensure no conflict of interest

Gifts and Bribes - Exceptions Discounts & Benefits

- Discounts/benefits depending on position/superior rank may usually not be accepted. Each case must be examined.

- Benefits offered on account of a government expenditure belong to the government, and may not be accepted for personal use.

Gifts and Bribes- You Make the Call

- SSG Fine, out shopping again, makes a big purchase for his unit from SuperStuff. They are honoring military personnel with recent overseas service, and SSG Fine picks up a $25 coupon to Carowinds. Also, purchases over a certain amount qualify for a free flash drive, which SSG Fine obtains and puts in his pocket. He also picked up a coupon at the door that says “Anniversary Sale, take 10% off your next purchase, bring in your register receipt and get 15% off.” He plans to bring his wife back later to take advantage. Is he ok?

Yes, No, and Maybe So. . .

- The discount coupon for Carowinds is not offered to all military personnel, so it is considered a gift. However, the group is large and not of a type to cause a conflict.
- The flash drive belongs to the government, since it was made available because of the government's purchase.
- He may use the coupon (available to the public), but only for 10%. SSG Fine may not personally profit from the government's expenditure, even if the government isn't going to use the discount.

Gifts and Bribes Remember -

Regardless of any exceptions, it is never permissible to:

- Accept a gift in return for being influenced in the performance of an official act
- Accept gifts from the same or different sources so frequently that a reasonable person would think you're using your public office for private gain
- Solicit a gift

Gifts and Bribes – Disposing of Improper Gifts

- Accidents do happen!
- If you accept or receive a questionable gift, report it to your supervisor/approving official.
- Gifts can be returned at government expense.
- Some perishable items may be shared.

Financial Disclosure

- There are two types of filing requirements: the Office of Government Ethics Confidential Financial Report (OGE Form 450) and the SF 278, for very senior personnel.
- Many acquisition professionals and some GPC personnel must file.

Financial Disclosure

- FOR GPC holders/approving officials, file w/in 30 days of assuming duties, annually thereafter.
- If authorized to spend (or supervise cardholders who aggregately are authorized to spend) over $100K in a year, you must file. If less than that, filing is in your supervisors' discretion.

Financial Disclosure

- OGE Form 450 available at SJA website
- Electronically complete, but must print for filer's signature and supervisor's signature
- Form is streamlined and does not require any amounts to be disclosed, only sources of income and types of assets

Who to Call

- Office of the Staff Judge Advocate, Administrative Law Division
- 751-6525; 751-7323

Questions ??
?